

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE: REFRIGERANT
COMPRESSORS ANTITRUST
LITIGATION

MDL Docket No. 2:09-MD-2042

Hon. Sean F. Cox

THIS DOCUMENT RELATES TO:

Civil Action No. 2:13-cv-12638

*General Electric Company v. Whirlpool
Corporation, et al.*

**RESPONSE TO MEMORANDUM BY DANFOSS DEFENDANTS IN
SUPPORT OF MOTION BY EMBRACO NORTH AMERICA, INC.,
WHIRLPOOL S.A., AND WHIRLPOOL CORPORATION TO STAY
PROCEEDINGS BY GENERAL ELECTRIC COMPANY AGAINST
HOUSEHOLD COMPRESSORS HOLDING SPA AND ACC USA, LLC
AND BRIEF IN SUPPORT THEREOF**

TABLE OF CONTENTS

INDEX OF AUTHORITIES	iii
STATEMENT OF ISSUE PRESENTED	iv
CONTROLLING OR MOST APPROPRIATE AUTHORITIES	v
PLAINTIFF GENERAL ELECTRIC COMPANY’S RESPONSE TO THE MEMORANDUM OF THE DANFOSS DEFENDANTS IN SUPPORT OF THE MOTION BY THE EMBRACO DEFENDANTS TO STAY DEFAULT JUDGMENT PROCEEDINGS	1

INDEX OF AUTHORITIES

Shanghai Automation Instrument Co., Ltd. v. Kuei,
194 F. Supp. 2d 995 (N.D. Cal. 2001).....2

STATEMENT OF ISSUE PRESENTED

Should the Court stay GE's motion for default judgment against Household Compressors Holding SpA and ACC USA, LLC?

GE answers no.

CONTROLLING OR MOST APPROPRIATE AUTHORITIES

Shanghai Automation Instrument Co., Ltd. v. Kuei,
194 F. Supp. 2d 995 (N.D. Cal. 2001)

**PLAINTIFF GENERAL ELECTRIC COMPANY’S RESPONSE TO
THE MEMORANDUM OF THE DANFOSS DEFENDANTS IN
SUPPORT OF THE MOTION BY THE EMBRACO DEFENDANTS
TO STAY DEFAULT JUDGMENT PROCEEDINGS**

On November 12, 2013, Danfoss filed a belated “memorandum”¹ in support of the earlier motion² filed by the Embraco defendants³ that seeks to stay proceedings by GE against the ACC defendants.⁴ Danfoss’s memorandum offers no new arguments in support of Embraco’s motion, merely parroting and incorporating the arguments made by Embraco. Accordingly, the arguments offered by the Danfoss defendants fail for the reasons articulated in GE’s opposition to Embraco’s motion,⁵ which is incorporated herein in its entirety.

Although Danfoss did not offer any additional arguments in its brief, it obliquely suggests in a footnote that it is positioned differently from the other defendants in this action because of “the product distinction and the limited time

¹ No. 2:09-md-02042, ECF No. 442; No. 2:13-cv-12638, ECF No. 52 (Danfoss Mem.).

² No. 2:09-md-02042, ECF No. 439; No. 2:13-cv-12638, ECF No. 49.

³ The term “Embraco” is used herein to refer to defendants Whirlpool Corp., Whirlpool S.A., and Embraco North America, Inc.

⁴ The term “ACC” is used herein to refer to defendants ACC USA, LLC and Household Compressors Holding SpA.

⁵ No. 2:09-md-02042, ECF No. 444; No. 2:13-cv-12638, ECF No. 53 (GE Opp’n).

period involved in its plea agreement.”⁶ Danfoss seems to suggest that a jury may not conclude that Danfoss participated in the compressors cartel. Besides being an extremely dubious proposition, this is not the type of “logical inconsistency” that favors delaying entry of a default judgment. It is always possible in a Sherman Act case that a particular defendant may persuade a jury that it was not a participant in the cartel. *See Shanghai Automation Instrument Co. v. Kuei*, 194 F. Supp. 2d 995, 1008 (N.D. Cal. 2001) (discussing the caselaw on inconsistent judgments and observing that “there are situations . . . where it [i]s theoretically proper to hold some defendants liable, e.g. for conspiracy to commit anti-trust violations, but other defendants innocent”). Indeed, if ACC had chosen to answer the Complaint and contest GE’s claims, there would have been nothing “inconsistent” about a jury ultimately finding that ACC had participated in the household compressor conspiracy, but deciding that Danfoss had not.

Like Embraco, Danfoss offers no reason for the Court to delay entry of a default judgment as to liability against the ACC defendants. When compared with the obvious potential prejudice to GE,⁷ Danfoss’s speculation regarding a theoretical “inconsistency” in judgments should be given little, if any, weight.

⁶ Danfoss Mem. at 4 n.2.

⁷ GE Opp’n at 8-9.

GE thus respectfully asks the Court to deny Danfoss's request to stay GE's proceedings against ACC.

Respectfully submitted,

/s/ Kimberly L. Scott

Carl H. von Ende, Bar No. P21867
Kimberly L. Scott, Bar No. P69706
Miller Canfield P.L.C.
101 North Main Street, 7th Floor
Ann Arbor, Michigan 48104
734-668-7696

Counsel for Plaintiff

Date: November 26, 2013

David M. Schnorrenberg
dschnorrenberg@crowell.com
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202-624-2500

CERTIFICATE OF SERVICE

I hereby certify that on November 26, 2013, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of such filing to counsel of record registered to receive electronic service.

/s/ Kimberly L. Scott

Kimberly L. Scott, Bar. No. P69706

scott@millercanfield.com

Miller Canfield P.L.C.

101 North Main Street, 7th Floor

Ann Arbor, Michigan 48014

734-668-7696